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Federal Communications Commission

DA 97-1774

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DISPATCHED

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MM Docket No. 97-186
Table of Allotments.	)	RM-9130
FM Broadcast Stations.	)	
(Canton and Glasford, Illinois)	)	

NOTICE OF PROPOSED RULE MAKING

Adopted: August 13, 1997;

Released: August 25, 1997

Comment Date: October 16, 1997

Reply Comment Date: October 31, 1997

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Neil A. Rones and Luann C. Dahl ("petitioners"), proposing the reallocation of Channel 266A from Canton to Glasford, Illinois, and the modification of the petitioners' construction permit (File No. BPH-951011MA) accordingly. Petitioners state their intention to apply for the channel, if reallocated to Glasford.

2. Petitioners seek to invoke the provisions set forth in Section 1.420(i) of the Commission's Rules, which permit the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community"). In support of their proposal, petitioners state that Glasford has a 1990 U.S. Census population of 1,115 persons. The community has its own local government with a mayor and a city council. Glasford also has a post office and its own zip code. Petitioners further state that Glasford maintains both water and sewer plants to serve the municipality. Telephone service is provided to the citizens by the Glasford Telephone Company. Glasford has a public library, public municipal park, and provides public safety through a volunteer fire department and a police department. Education of the citizens of Glasford is provided by an elementary school, a middle school, and a high school. Glasford has numerous businesses, banks, churches, civic organizations, and all the attributes normally associated with a midwestern city.

3. Petitioners assert that the reallocation of Channel 266A from Canton to Glasford, Illinois, would result in a preferential arrangement of allotments under the Commission's FM allotment priorities, since it would provide a first local aural transmission service to Glasford without removing the sole local service from Canton.<sup>1</sup> While Glasford currently has no local aural transmission service, Stations WBYS(AM) and WBYS-FM would remain licensed to Canton.

4. Moreover, petitioners claim the reallocation of Channel 266A to Glasford would result in a 60 dBu contour increase in population of 88,330 persons, an increase of 67%. Petitioners maintain that the reallocation is consistent with the requirements set forth in Change of Community, *supra*. Petitioners further maintain that since the station is unbuilt, the reallocation would not result in the loss of "existing service" to Canton, citing Woodville Mississippi, et al., 11 FCC Rcd 4712 (1996). Petitioners contend that Glasford is an independent community not located within any urbanized area. Although Glasford is near the Peoria Urbanized Area (12 kilometers), petitioners further contend that the proposed reallocation would provide neither 60 dBu coverage of 100% of the Urbanized Area, nor 70 dBu coverage of 50% or more of the Urbanized Area, citing Greenfield and Del Ray Oaks, California, 11 FCC Rcd 12681 (1996); and Headland, Alabama, et al., 10 FCC Rcd 10352 (1995). Therefore, a Tuck analysis is not necessary.<sup>2</sup>

5. We recognize that a construction permit (File No. BPH-951011MA) has been issued for Channel 266A at Canton, but no station has been built. However, since petitioners seek to relocate their transmitter site, there will be potential gain and loss areas. Therefore, petitioners are requested to provide information regarding any potential gain or loss areas, and any overall benefits that would be derived by the reallocation.

6. We believe the proposal warrants consideration since the reallocation of Channel 266A to Glasford, Illinois, could provide the community with its first local aural transmission, without depriving Canton of its sole local aural service. An engineering analysis has determined that Channel 266A can be allotted to Glasford in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioners' requested site.<sup>3</sup> As requested, we will propose to modify the petitioners' construction permit to specify Glasford, Illinois, as the new community of license. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of

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<sup>1</sup>See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 91 (1982).

<sup>2</sup> See also Huntington Broadcasting Co., v. FCC, 192 F.2d 33 (D.C. Cir. 1951), RKO General, Inc., 5 FCC Rcd 3222 (1990), and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

<sup>3</sup>The coordinates for Channel 266A at Glasford are North Latitude 40-34-20 and West Longitude 89-48-47.

interest in the use of Channel 266A at Glasford, Illinois.

7. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Canton, Illinois	266A, 300B1	252A, <sup>4</sup> 300B1
Glasford, Illinois	---	266A

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before October 16, 1997, and reply comments on or before October 31, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner or its counsel or consultant, as follows:

Frank R. Jazzo, Esq.  
Fletcher, Heald & Hildreth, P.L.C.  
1300 North 17th Street, 11th Floor  
Rosslyn, Virginia  
(Counsel for Petitioner)

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

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<sup>4</sup>A Notice of Proposed Rule Making (RM-8894) was adopted on November 1, 1996, proposing the allotment of Channel 252A at Canton, Illinois. See 11 FCC Red 14464 (1996).

11. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

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APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's

Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.